

In the Matter of Merchant Mariner's Document No. Z-902768-D1 and
all other Seaman Documents

Issued to: Paul A. Adams

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1408

Paul A. Adams

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 29 September 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for six months outright plus four months on fifteen months' probation upon finding him guilty of misconduct. The three specifications were proved by evidence that while serving as an oiler on board the United States SS FLYING SPRAY under authority of the document described, on 27 June 1961, Appellant failed to stand his watch from 0000 to 0800; on 15 July 1961, he took an alcoholic beverage (beer) on board the ship; and on 16 July 1961, Appellant refused to obey a lawful order of the Third Mate to leave the saloon deck.

Each specification is supported by an entry in the ship's Official Logbook. Testimony given by the ship's Chief Engineer and Third Mate also support the allegations.

No evidence was submitted in defense since Appellant was not present at the hearing after the Investigating Officer rested his case.

The only contention on appeal which it is appropriate to comment on is Appellant's claim that he was precluded from introducing the testimony of witnesses in his behalf since he was told, on 19 September 1961, that he would be notified of a new date to be set for the hearing but he was never notified.

OPINION

After two adjournments, Appellant appeared at 0945 on the date set for the hearing (19 September 1961). Appellant had in his possession three subpoenas which had been issued to him to be served on witnesses to appear on 19 September. Appellant left at about 1000 to serve the subpoenas and said he would return at 1130

for the hearing. The proceeding was held up for more than two hours after 1130 awaiting Appellant's return and was continued to two subsequent dates. Efforts were made to notify Appellant of these dates. Appellant was not in contact with the Coast Guard personnel in New York at any time after 19 September 1961 until the Examiner's decision was served on Appellant in December 1962.

Although the Investigating Officer was at fault originally when he promised to notify Appellant's witnesses to appear at the hearing on the first day and then did not do so, this did not prejudice Appellant's cause since he requested a continuance on the first day in order to obtain counsel (but counsel was never obtained). Later, the subpoenas were issued by the Examiner, furnished to Appellant for service and then nothing was heard from him after 19 September. Under these circumstances, it is my opinion that Appellant was afforded ample opportunity to prepare and present his defense.

The six months' outright suspension is the result of revocation of the probation in an order of 12 May 1960 when Appellant's documents were suspended for six months outright plus six months on twelve months' probation for failure to perform his duties on two occasions. In view of this and Appellant's additional prior record of similar offenses, the order imposed by the Examiner in this case was entirely justified.

ORDER

The order of the Examiner dated at New York, New York, on 29 September 1961, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 5th day of August 1963.